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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,815

08/18/2003

Oliver Dittmar

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4785

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Davidson, Davidson & Kappel, LLC
485 7th Avenue
14th Floor
New York, NY 10018

EXAMINER

DARNO, PATRICK A

ART UNIT

PAPER NUMBER

2169

MAIL DATE

DELIVERY MODE

02/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/643,815	Applicant(s) DITTMAR ET AL.	
	Examiner PATRICK A. DARNO	Art Unit 2169	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 30 January 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-3, 5, 6, 8 and 10-12.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Mohammad Ali/
 Supervisory Patent Examiner, Art Unit 2169

/Patrick A. Darno/
 Examiner, Art Unit 2169
 02-12-2009

Continuation of 11. does NOT place the application in condition for allowance because:

The Examiner has considered the Applicant's after final arguments. The Examiner is not persuaded. The majority of the Applicant's arguments have been thoroughly responded to in the mailings of previous office actions. However, the Russell reference was added in the Final Rejection 10/27/2008. As a result, the arguments set forth with respect to the Russell reference will be briefly addressed.

Applicant Argues:

It is respectfully submitted that none of the cited references discloses "the print job determining minimum requirements to be met by a machine to be eligible as a process data set for a simulation and excluding machines that do not meet requirements from the simulation.

Furthermore, it is respectfully submitted that it would not have been obvious to one of skill in the art to have modified Nguyen et al. in view of Newman and Russell et al. to meet the limitations of claim 1.

Examiner Responds:

Examiner is not persuaded. First it is noted that Claim 1 is rejected under the combination of Nguyen, Newman, and Russell. Therefore, some limitations of the claim are disclosed by each of the references, and when taken in combination, they disclosed the entire claim.

It is noted for the record that Russell does not disclose a simulation dealing with print jobs. However, a simulation wherein the input comprises test print jobs [ordered data set] is disclosed by Newman [Newman: column 1, lines 26-31]. As a result, it is not required that Russell discloses wherein the input data set is a print job in order for the rejection under 35 U.S.C. 103(a) to be proper.

When closely analyzed, the Applicant's limitation in dispute above describes a constraint on the input values of variables of a simulation. And based upon the constraints, certain objects of the simulation are excluded.

Russell discloses a constraint on the input values of variables of a simulation, wherein certain objects of the simulation are excluded [Russell: paragraph [0038]]. It is clear from the text of Russell: paragraph [0038] that Russell discloses limiting the input values to a variable of a simulation [Russell: paragraph [0038]; See specifically: "...limits may be applicable to variables that are to be input for performing a simulation..."]. Furthermore, these limits are based upon the machines used for the simulation. Therefore, machines [in this case reactors] not meeting the constraint on the input variables are effectively excluded.

Finally, the Examiner asserts that proper motivation to combine the references has been cited in the Final Office Action mailed 10/27/2008. Not only does there appear to be proper motivation, but all three references are directed to simulations. Since there is express motivation in each of the references, and they are all in the same field of endeavor [electronic simulations], the Examiner asserts that the combination of the references is proper.

Since it appears the each and every element of the Applicant's claimed invention is either disclosed or suggested by the prior art of record, the claims remain rejected under the reasons set forth in the Final Office Action mailed. 10/27/2008.

For any other issues, the Examiner directs the Applicant to the Final Office Action mailed 10/27/2008.